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Senior Adviser
Individuals and Indirect Tax Division
The Treasury
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Dear Sir/Ms:

Re: **Tax Deductible Gift Recipient Reform Opportunities**

Thank you for the opportunity to make these comments on Treasury proposals to strengthen DGR governance arrangements, reduce administrative complexity and ensure that an organisation's eligibility for DGR status is up to date.

If Treasury takes oral evidence, please accord us the privilege of being heard, preferably in Melbourne.

We support DGR status for not-for-profit entities that: "allows an organisation to receive gifts and contributions for which donors are able to claim a tax deduction," to: "encourage philanthropy and provide support for the not-for-profit (NFP) sector. (which) … encourages the delivery of goods and services that are of public benefit." DGR makes the tax system fairer as it also enables for-profit corporations and cashed up individuals to claim many tax concessions and subsidies that serve their bottom line, rather than the public interest.

1. who we are:

Gene Ethics is a not-for-profit educational network with a constituency of over 7,000 citizens and kindred groups, who envisage a safer, more equitable and sustainable GM-free society. We want the precautionary principle, scientific evidence and the law rigorously applied to all proposed uses of Genetic Manipulation (GM) techniques and their products.

These include, for example, the new synthetic biology and other emerging GM techniques (CRISPR; RNAi; ZFN; Talen; etc.). These are now the subject of inquiries into regulation and legislation that the Legislative and Government Forum on Gene Technology and the Office of Gene Technology Regulator are conducting.

2. how we function

From our founding in January 1988 until 2003, we were an Unincorporated Association operating under the auspices of the Australian Conservation Foundation, which has DGR under an Act of Parliament. We separated from ACF as we received federal government grants to produce and distribute educational materials on Genetic Manipulation techniques and their products from 1991-96. We were also key participants in a House of Reps Inquiry which produced the report Genetic Manipulation: the threat or the glory? In 1992, the public consultations and debate that led to the

Gene Technology Act 2000, and the Senate Inquiry that produced the report Fish Don't Lay Tomatoes. Our advocacy of precaution, independent science, and the rule of law on new and emerging technologies continues.

On March 20, 2003, Gene Ethics was registered with ASIC, as a Company Limited by Guarantee. Our constitution conforms with the model rules of the Register of Environment Organisations and we also registered a Trust Deed with the intention of gaining DGR status.

However, we did not complete the DGR application process for admission to the REO because of our limited resources and expertise, barriers to recruiting 'responsible persons' (in addition to our responsible Board members) proved daunting, the lengthy application process was too onerous, and we decided that the ongoing reporting requirements would divert scarce resources from our core work.

We concur with the discussion paper's: "concerns that the application process for obtaining DGR status is too complex," and we were dissatisfied with the delays and requirements for entry onto the REO.

3. how we now comply - funding

Friends of the Earth (FoE) now provides Gene Ethics with auspicing, providing database and accounting services for a fee and maintaining due diligence on the accountability and transparency of our appeals for public funds to support our work.

This in no way infringes the 'conduit' provisions of tax law. If donors to FoE express a clear preference that their gifts are allocated to Gene Ethics' work, at FoE's discretion it may grant funds to Gene Ethics. This fulfills our joint purpose of advancing the wellbeing of natural environments by furthering projects with the goals of safe and sustainable GM-free food and farms.

Whatever this inquiry decides about DGR, auspicing and affiliation agreements between kindred NFP organisations that share common goals should continue to be permitted. These arrangements reduce overall administrative costs, cut red tape, and ensure our compliance as the integrity of our partner is also at stake. Optimising the use of our small budget, to serve our vision and mission, meets public expectations that gifts are not wasted.

4. how we now comply – activities

We would welcome the opportunity to be registered with the ACNC. It appears Gene Ethics is already eligible to be registered as a charity with the ACNC as we are:

- an NFP entity;
- have an ABN;
- comply with ACNC governance standards;
- do not have a 'disqualifying purpose' (engaging in or promoting activities that are unlawful or contrary to public policy, or the purpose of promoting or opposing a political party or a candidate for political office); and
- are not an individual, political party or government entity.

Gene Ethics and our constituents, engage in public discussion, policy development, submission writing, publicity and other activities to fulfill our vision and mission – to ensure that GM techniques and products are only deployed if they are sustainable, safe and in the public interest.

Our engagement in public discourse is always non-partisan. For instance, we regularly canvass the relevant policies of all political parties in state and federal elections and report to electors on our findings, without favour. We meet and discuss policy with all politicians who will open their doors to us.

We have charitable purposes that comply with the REO and Charities Act 2013 which says:

> Note: The purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country may be a charitable purpose (see paragraph (l) of the definition of charitable purpose).
>
> 12 (l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:
>
> (i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
>
> (ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

In developing this brief, we ask Treasury to note that a majority of judges of the High Court found in AIDWATCH Incorporated v Commissioner of Taxation [2010] HCA 42 (High Court of Australia, 1 December 2010) that generation of public debate was a charitable purpose because its activities contributed to public welfare and were therefore charitable: https://wiki.qut.edu.au/display/CPNS/AidWatch+Incorporated+v+Commissioner+of+Taxation.

The Australian Tax Office summarises the court's findings thus:

> • "The court was of the view that the origin of the apparent "political activities" disqualification notion (i.e., Bowman v Secular Society Ltd [1917] AC 406) was decided in a context which did not take account of the Australian Constitution, and the inherent right of constituents for agitation and communication about matters affecting government, politics and policies.
> • The court decided that in Australia, there is no general doctrine which excludes from charitable purposes "political objects".
> • The court held that the concern of and attempts by Aid/Watch to promote the effectiveness of aid delivery was clearly aimed at the relief of poverty and that the promotion and generation by lawful means of public debate about matters affecting the better use of and delivery of Australian aid was a matter falling within the fourth Pemsel head, i.e., purposes beneficial to the community."

http://law.ato.gov.au/atolaw/print.htm?DocID=LIT%2FICD%2FS82of2010%2F00001&PiT=99991231235958&Life=20141211000001-99991231235959

Gene Ethics also satisfies environmental and other definitions of 'Charitable Purpose' in Section 12 (1) of the Charities Act 2013 - Definition of charitable purpose:

(1) In any Act: charitable purpose means any of the following:

(b) the purpose of advancing education;

We advance education for the general public, students and policy-makers by generating and distributing information and analysis on the ethical, environmental, social and economic impacts of Genetic Manipulation techniques and their products.

(c) the purpose of advancing social or public welfare;

We also advance social and public welfare by, for instance, empowering shoppers with our GM-free Shopping List.

(j) the purpose of advancing the natural environment;

We seek to ensure that all human food and animal feed are safe, that the impacts on natural environments of food and fiber production are minimised, and that sustainability and natural and agricultural seed biodiversity are improved.

(k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);

Promoting public information, discussion and debate about new technologies and their products is essential in a technological society such as Australia now is. For instance, the present debate over the impacts of Artificial Intelligence and Robotics is essential to preparing for their imminent arrival

in our workplaces and lives generally. Similarly, proposals for human genetic engineering now being promoted.

4. consultation questions and answers

1. What are stakeholders' views on a requirement for a DGR (other than government entity DGR) to be a registered charity in order for it to be eligible for DGR status?

> We support this proposal, provided the processes for application to the ACNC and ATO are simplified, facilitated and that compliant transferees from the four Registers (including the REO) are routinely accepted.
>
> Clarifying the DGR rules and having officials fairly, equitably and objectively apply them will be far superior to the variable and unpredictable political decisions of Ministers of the day.
>
> Adopting the ACNC definition of "responsible persons" is favoured as the REO definitions are far too restrictive and challenging for many would-be applicants.
>
> We again recommend that, compliant entities which do not apply for DGR in their own right may still be auspiced by, or affiliated with, those that have DGR, provided they are not mere conduits. These bigger groups can more efficiently and effectively undertake the accounting, administration and compliance services that smaller non-DGR entities require to raise funds consistent with the purposes of their sponsors.

What issues could arise?

> We do not envisage any.

2. Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement and, if so, why?

> The definitions of charitable purpose in the Charities Act 2013 appear to be sufficiently broad and exhaustive that they will cover all the organisations now on the four Registers. If they do not, amendments to the Act should fix any problem.

3. Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?

> Since: "The ACNC can withhold or remove information from the ACNC Register in prescribed circumstances. Private ancillary funds can ask the ACNC to withhold or remove some information from the ACNC Register, such as information likely to identify individual donors," there does not appear to be a problem that cannot be resolved.
>
> However, the privacy of all donors to all ACNC registered organizations must be securely protected, both individuals and other entities. Ancillary funds are not the only ones with their reputations and security at stake.

4. Should the ACNC require additional information from all charities about their advocacy activities?

> No, and the work of those groups on the REO or other Registers should certainly not be singled out for particular attention.
>
> Advocacy itself should not be treated differently from any other legitimate activity that ACNC registrants undertake. It is clearly permitted for registered entities, under Section 12 of the Charities Act 2013.

Political complaints or disputes over an NFP's advocacy should be outside the purview of the ACNC, provided an entity complies with ACNC rules. Mediation services may be useful where someone claims to be aggrieved over any of the activities of a registered entity.

If 'advocacy' is picked out for special attention, it should apply to all registered charities. It should include all the components of advocacy such as policy research and development, political communications and campaigning, lobbying, etc. DGR Think Tanks or Policy Units that spend 100% of their funds on advocacy should be included.

The Institute of Public Affairs, Sydney Institute, Australia Institute, Lowy Institute, the Centre for Independent Studies, the Centre for Policy Development, and many more would be required to report all their activities, which may not be a bad thing. However, such a requirement appears unreasonably onerous and impractical, with few benefits.

5. Is the Annual Information Statement the appropriate vehicle for collecting this information?

Yes, provided it is standard for all entities and simple to complete, with realistic deadlines for compliance.

6. What is the best way to collect the information without imposing significant additional reporting burden?

The proposed actions set out in paragraphs 31 and 32 appear appropriate and fit for purpose. We note that the ACNC has from time to time deregistered some charities and assume this was for non-compliance after all efforts to elicit compliance failed.

7. What are stakeholders' views on the proposal to transfer the administration of the four DGR Registers to the ATO?

Transferring their registration to the ACNC and the ATO would be appropriate.

It's not clear why registration with the ACNC alone is insufficient. Making registration still subject to the Treasurer of the day making political decisions appears unnecessary. It ventures again into the realm of politics rather than objective administration of a system that is fair and equitable to all.

Are there any specific issues that need consideration?

The REO should not be singled out for any particular kind of reporting or compliance. People with particular views on foreign aid, animal welfare or social justice might just as well have proposed that they be picked out for selective and onerous attention. It just happens that those lobbies are not as well organized as the political opponents of environment groups are at this time. It will pass.

8. What are stakeholders' views on the proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories?

We support both proposals.

The public fund requirements are arcane and unnecessary with contemporary banking and other services now available to ensure the secure, orderly and accountable administration of funds.

Endorsement in multiple DGR categories will facilitate compliance and reflects the present reality in the multi-faceted and diverse activities and aspirations of the not-for-profit, public interest sector. This may, however, require further review if a large number of entities which operate for the profit of members – such as primary production co-operatives – register themselves as charities.

It is appropriate and helpful that the ACNC definition of 'responsible person' would apply as the DGR must be a registered charity. The REO definition of 'responsible person' is unrealistic and onerous.

Are regulatory compliance savings likely to arise for charities which are also DGRs?

Yes, a one-stop shop at the ACNC would likely produce savings.

9. What are stakeholders' views on the introduction of a formal rolling review program and the proposals to require DGRs to make annual certifications?

Provided annual certification is standard and routine it need not be onerous. Rolling reviews, augmented by unannounced spot checks may ensure full compliance.

Are there other approaches that could be considered?

Not sure.

10. What are stakeholders' views on who should be reviewed in the first instance? What should be considered when determining this?

No groups should particularly targeted, unless there is sound evidence of non-compliance. Reviewing, say, 10% of registrants per year over a decade should be adequate, starting with those registered first.

11. What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?

If there is to be a sunset clause on charities, it should also apply to for profit corporations. It is inequitable the registered NFPs should be singled out.

12. Stakeholders' views are sought on requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50 per cent, should be considered?

We welcome non-politicised review of the governance arrangements for all not-for-profits. Transparency and rigour in the not-for-profit reporting processes will help everyone, by removing unnecessary duplication, management inconsistencies, failures of compliance, and reducing reporting burdens.

But we absolutely reject this proposal as the rules for charities should be applied equitably and fairly to all. This idea is unfair, inequitable and motivated by short- term politics, attempting to limit or sanction environmental groups for working in diverse ways to protect natural and built environments.

It is inimical to making and implementing good policy for the longer-term future and benefit of the whole community, not just certain sectors. Those who object to their activities might also have picked out other Registers for odious attention.

DGR listed green groups must not be forced to allocate 'up to' 50% of their DGR funds to "environmental remediation" – picking up litter, weeding, or planting trees. It is not appropriate or necessary that all environment groups would be required to engage in these worthwhile activities, as thousands of groups and volunteers set up for the purpose already engage in this work.

Other legitimate environmental protection activities such as advocating for environmental

protection, designing public policy or publicizing environment issues must also be resourced through the DGR system. It is essential that groups can be funded to engage in community education, campaigns and advocacy to protect the environment which is the life support system for humans and all other species.

It would be a wasteful duplication of effort and misapplication of scarce resources to require all environment groups to engage in remedial activities.

The Institute for Public Affairs and some political parties are among the leading advocates that green groups lose tax-deductibility for gifts or to spend 50% of their income on practical conservation. Their advocacy of this proposition is exactly the advocacy which they seek to defund.

Yet the IPA (and other think tanks and policy groups) researches, advocates and lobbies on environmental topics such as: climate change; energy and resources; environment and agriculture; planning and housing (in the built environment); and many more related topics. http://ipa.org.au/research-areas

On the level playing field which Treasury, the ACNC and ATO should endorse, the IPA would be required to also apply up to 50% of its DGR donations to practical remediation activities that serve the public good. These could include, for example, reducing CO2 emissions, installing renewable energy systems, picking up litter, working in community gardens, and providing housing for the homeless. Bring it on!!

Talking with all levels of government to inform politicians and officials of community sentiment on environmental policy and protection, is an essential dialogue that would cease if green groups were disqualified from DGR and lost much of their capacity to raise funds. Meanwhile, corporations and ideological advocates, whose activities may harm the environment, can still claim their lobbying, policy-making and influence peddling as tax-deductible expenses. Without a community voice, corporate access to decision-makers would be unfettered and unchallenged. That is not in the public interest.

The proposal to single out green groups is plainly political and Treasury should refrain from playing that game. As the Sydney Morning Herald reported: “the government has chosen to focus on the estimated $90 million returned to individuals for donations to environment groups rather than the $1.6 billion in deductions associated with churches and the big welfare charities and aid agencies.”
http://www.smh.com.au/federal-politics/political-news/preventingpolitical-advocacy-by-environment-groups-an-attack-on-democracy-20150518-gh4dak.html

In particular, what are the potential benefits and the potential regulatory burden?

There are no potential benefits in a just and objective system that applies its rules equally and fairly to all, without prejudice to any.

The regulatory burden of this scam, on the regulators and the regulated, would be enormous. Setting the scope of activities that meet the criterion of environmental remediation would be a challenge, while compliance and monitoring compliance would be monumental tasks with no payoffs.

Having revoked the requirement for public funds and trust accounts to lessen the administrative burden, similar systems would then be required to cope with the complexities of separately administering and accounting for a percentage of DGR funds (also funds raised without DGR) and applying them to distinct purposes.

How could the proposal be implemented to minimize the regulatory burden?

There is no way the regulatory burden of this jaundiced proposal could be minimised.

13. Stakeholders' views are sought on the need for sanctions. Would the proposal to require DGRs to be ACNC registered charities and therefore subject to ACNC's governance standards and supervision ensure that environmental DGRs are operating lawfully?

This question, unfairly and without apparent justification, targets environmental DGRs for particular sanctions. If sanctions were introduced, they must apply without fear or favour to all registered DGR entities.

There is no evidence that environmental groups are more or less likely to infringe the laws of the land than others. And since the ACNC and ATO do not enforce those other laws, they have no business applying further sanctions where a court or other tribunal judges someone guilty of a wrongdoing. The suggested sanctions would constitute double punishment.

Like everyone else, all DGRs and citizens should comply with the law, and other legal institutions should enforce the law where it is breached. We do not consider that registration with the ACNC and ATO, and compliance with their governance standards and supervision, would ensure that any DGRs are more likely to behave lawfully in other arenas of their operations.

We reject the need for sanctions on any DGR entities through the ACNC or ATO for infringements of laws, outside the scope of the Charities and Tax Acts. These regulators have no resources or capacity to make fair and measured judgments on any groups, except insofar as they supervise compliance with their own rules.

It would be totally unreasonable to widen environment group responsibility for the lawfulness of actions that their members, supporters or interlopers may take, however remotely. The enforcement of laws should take their course and those who are responsible be charged. But trying to spread the net of responsibility to those who have not infringed breaches natural justice.

The proposal is unworkable as no group, including political parties, churches and others which have DGR status, are held responsible for all the actions of their adherents. For instance, the fund raising activities of churches is unsanctioned, despite paedophile clergy and laity chronically flouting the law and committing child sexual abuse. Their callous infringements of human rights are profoundly more damaging to our society than anything environment groups have ever done.

Government would be favouring the self-interested fossil fuel and mining sectors if it introduced sanctions against environment groups. Peaceful protest and resistance is key in a healthy democracy and engaging in such actions are not evidence that an organisation sanctions 'illegal' activity.

5. our recommendations to the Senate inquiry

Among our comments to the Senate inquiry into the REO and DGR were the following recommendations that remain relevant here:

1. the definition of 'environmental organisation' in the Income Tax Assessment Act 1997 remain unchanged as it is a robust and suitable characterization, fit for purpose;

2. the criteria and principal purposes that qualify organisations for listing on the Register of Environmental Organisations not be amended, as practical, physical environmental work must be augmented by education, research and policy-making, to be effective;

3. continued inclusion of all those now on the Register be reconfirmed, since they meet the requirements for listing, comply with the law, pursue 'purposes beneficial to the community' and 'contribute to public welfare', as the Act requires.

4. those listed on the Register of Environmental Organisations continue to have tax deductibility for donations towards the cost of their work, as the legislation now permits. Great public benefit derives from their work in protecting and enhancing the quality of our environments and human health, to benefit us all;

5. the present reporting requirements for those on the SEO Register remain unchanged, as the government is committed to minimising red tape. The administrative burden of compliance for organisations should be commensurate with the already stringent and enforceable monitoring and scrutiny that the Tax Office and the Department of the Environment practice;

6. conclusion

Please favourably consider and follow our comments and recommendations. We ask Treasury for opportunities to further engage with officials during this process. If we can meet face to face, we would prefer it be in Melbourne.

Yours sincerely,

Bob Phelps

Bob Phelps
Executive Director

The GM-Free Australia Alliance Inc (GMFAA) also endorses these comments. It has been an Incorporated Association under Section 7 of the Associations Incorporation Act 1981 (Victoria) since October 22, 2012. It is an Affiliate Member of FoE as it does not have DGR status in its own right. GMFAA is an independent not-for-profit Alliance of organisations and individuals sharing a common concern and motivation to act on the threat of Genetic Manipulation (GM) in Australia. Our mission is to facilitate cooperation between, and coordinated action by, the groups which make up the Alliance.